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ALEXANDER L. STEVAS,
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No. ____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

ALFRED FICALORA,

Petitioner,

—v.—

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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52 pp

QUESTIONS PRESENTED

1. Is there any authority granted by the Constitution of the United States of America ("Constitution") to Congress to impose on the individual person who is the petitioner herein a "Federal income tax for the taxable year 1980" and, if such authority exists, which words of the Constitution grant such authority to Congress?

2. Are there any laws or statutes enacted by Congress imposing on the individual person who is the petitioner herein a "Federal income tax for the taxable year 1980" or liability-for-payment of a "Federal income tax for the taxable year 1980" and, if such laws or statutes exist, what is the citation and wording of such laws or statutes?

3. Is Internal Revenue Code of 1954 ("Code") Section 1 unconstitutional because that section violates Article I, Section 8, clause 1 of the Constitution which requires that "Excises shall be uniform throughout the United States", based on the fact that Code Section 1 imposes an excise on "taxable income" (which term "taxable income" is vague and indefinite because the underlying term "income" is undefined and unmeasureable); and if Code Section 1 is not unconstitutional on that account:

   a. What is the precise definition of "income" as that term is used in taxing statutes?, and

   b. Precisely how is "income" measured objectively for purposes of taxation?

PARTIES TO THE PROCEEDING

The parties before this Court are solely those listed and set forth in the caption of this case.

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Point 3: The word "income" as used in taxing statutes has no defined meaning, cannot be measured objectively, and this failure of definition and measureability makes "uniformity" of excises on income in the Constitutional sense impossible and renders the Code Section 1 excise on "taxable income" unconstitutional and void because Article I, Section 8, clause 1 of the Constitution requires that "Excises shall be uniform throughout the United States." 18

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No. ____

ALFRED FICALORA,

Petitioner,

— v. —

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner Alfred Ficalora respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit entered in this case on December 13, 1984.

OPINIONS BELOW

The opinion of the United States Court of Appeals (Appendix A, infra) is reported at 751 F.2d 85. The Order and Decision and opinion of the United States Tax Court (Appendix C, infra) is not reported.

JURISDICTION

The opinion and judgment of the Court of Appeals was entered and filed on December 13, 1984. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitution of the United States (hereafter Constitution) provides in relevant part:

Article I, Section 2, clause 3:

> Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers.

Article I, Section 8, clause 1:

> The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises . . .; but all Duties, Imposts and Excises shall be uniform throughout the United States.

Article I, Section 9, clause 4:

> No capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

Sixteenth Amendment:

> The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

The Internal Revenue Code of 1954 (26 U.S.C.) (hereafter Code) provides in relevant part:

Subtitle A — Income Taxes (Code §§ 1 - 1564)

§ 1. (c) UNMARRIED INDIVIDUALS (OTHER THAN SURVIVING SPOUSES AND HEADS OF HOUSEHOLDS). — There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b) who is not a married individual (as defined in section 143) a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $2,300	No tax.
...	...

§ 11. Tax imposed

(a) Corporations in general. — A tax is hereby imposed for each taxable year on the taxable income of every corporation.

§ 61. Gross income defined

(a) General definition. — Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, and similar items;

(2) Gross income derived from business;

(3) Gains derived from dealings in property;

(4) Interest;

(5) Rents;

(6) Royalties;

(7) Dividends;

(8) Alimony and separate maintenance payments;

(9) Annuities;

(10) Income from life insurance and endowment contracts;

(11) Pensions;

(12) Income from discharge of indebtedness;

(13) Distributive share of partnership gross income;

(14) Income in respect of a decedent; and

(15) Income from an interest in an estate or trust.

§ 62. Adjusted gross income defined

For purposes of this subtitle, the term "adjusted gross income" means, in the case of an individual, gross income minus the following deductions: . . .

§ 63. Taxable income defined

(a) **Corporations.** — For purposes of this subtitle, in the case of a corporation, the term "taxable income" means gross income minus the deductions allowed by this chapter.

(b) **Individuals.** — For purposes of this subtitle, in the case of an individual, the term "taxable income" means adjusted gross income —

(1) reduced by the sum of —

(A) the excess itemized deductions,

(B) the deductions for personal exemptions provided by section 151, and

(C) the direct charitable deduction, and

(2) increased (in the case of an individual for whom an unused zero bracket amount computation is provided by subsection (e)) by the unused zero bracket amount (if any).

Subtitle B — Estate and Gift Taxes (Code §§2001 — 2622)

Chapter 11 — Estate Tax

§ 2001. Imposition and rate of tax

(a) Imposition. — A tax is hereby imposed on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

§ 2002. Liability for payment

The tax imposed by this chapter shall be paid by the executor.

STATEMENT OF THE CASE

A. Proceedings Below

In response to an assertion in a notice of deficiency sent to petitioner Alfred Ficalora by respondent on June 2, 1983 that petitioner owed a Federal income tax of $10,013.09 and additions thereto of $606.55 and $526.05 for the taxable year 1980, petitioner filed a Tax Court petition on September 1, 1983 with the Tax Court, which petition was filed in a timely manner so as to invoke jurisdiction of the United States Tax Court under 26 U.S.C. §6213(a).

Respondent never filed an answer to any of the allegations set out in the Tax Court petition, and there was no trial on the merits of this case.

On October 24, 1983 respondent moved, pursuant to Rule 40 of the Rules of Practice and Procedure of the United States Tax Court, to dismiss the petitioner's case for failure to state a claim upon which relief can be granted. The Tax Court granted respondent's motion on December 15, 1983 and entered its Order and Decision by Tax Court Judge Dawson, adopting the order of Special Trial Judge Gussis, (Appendix C, infra) that it is

> ORDERED that respondent's Motion to Dismiss for Failure to State a Claim Upon Which Relief can be Granted, filed on October 24, 1983, is granted; and it is further
>
> ORDERED and DECIDED that there is a deficiency in petitioner's Federal income tax for the taxable year 1980 in the amount of $10,013.09 and additions to tax due from petitioner for the taxable year 1980 under sections 6651(a)(1) and 6653(a)(1) in the respective amounts of $606.55 and $526.05.

Following the denial on January 16, 1984 of petitioner's Tax Court motions for reconsideration and to vacate or revise the Tax Court decision, petitioner filed a timely Notice of Appeal to the United States Court of Appeals for the Second Circuit on April 18, 1984 so as to invoke jurisdiction of the Second Circuit Court of Appeals under 26 U.S.C. §7482.

On December 13, 1984 the Second Circuit Court of Appeals entered its Judgment (Appendix B, infra) and Opinion (Appendix A, infra) written by Honorable T. Emmet Clarie, Senior United States District Judge for the District of Connecticut.

B. Underlying Facts

Petitioner is an individual human person and is not a corporation.

Prior to the time respondent moved to dismiss petitioner's Tax Court petition for failure to state a claim upon which relief can be granted, the only document filed with the Tax Court was petitioner's Tax Court petition. Respondent has never even filed an answer to any of the allegations of that petition, and there was no trial on the merits of this case.

It was uncontested by respondent in the Courts below that on respondent's Tax Court motion to dismiss the Tax Court petition for failure to state a claim upon which relief can be granted, petitioner's Tax Court petition (D-1, infra) is to be construed

in the light most favorable to petitioner, and the Tax Court petition allegations are to be taken as true; see *Wright & Miller, Federal Practice and Procedure: Civil Section 1357* and the authorities cited therein.

Thus we are able, by referring to the Tax Court petition allegations (D-1, infra), to set forth all the underlying facts in the record of this case which are necessary and accurate for an understanding of this case and the disputes between the parties, as follows:

The respondent asserted in a notice of deficiency that petitioner was liable for payment of $10,013.09 Federal Income tax for the taxable year 1980 and for payment of additions to that tax for the taxable year 1980 under Code sections 6651(a)(1) and 6653(a)(1) in the respective amounts of $606.55 and $526.05.

Petitioner thereafter filed a timely Tax Court petition (D-1, infra) controverting respondent's notice of deficiency and challenging, inter alia, the Constitutionality and legality of the asserted liability-for-payment of the asserted Federal Income tax and additions thereto for the taxable year 1980.

Petitioner's Tax Court petition allegations (see D-1 through D-6, infra) contain all other relevant undenied underlying allegations of fact in the record of this case, including (but not limited to):

1. There are no words in the Constitution empowering Congress to impose an income tax directly on petitioner. (D-2, infra).
2. Congress did not impose an income tax on petitioner for 1980. (D-2, infra).
3. Congress did not enact any legislation making petitioner liable for payment of an income tax for 1980. (D-3, infra).
4. The term "income" is undefined, vague and indefinite, as is also the term "taxable income". (D-3, infra).

5. There is no objective standard showing how "income" can be measured. (D-3, infra).
6. Petitioner had no "income" or "gross income" or "adjusted gross income" or "taxable income" in or for the year 1980. (D-4, infra).
7. Petitioner is not liable for payment of an income tax for 1980. (D-6, infra).

C. Misstatements and Misattributions Appearing in Opinion of the Court of Appeals

The entire first paragraph of the BACKGROUND portion of the opinion (A-2, infra) is not grounded in the record in this case. It is inaccurate throughout and stated in the form of unfounded and unwarranted conclusions of law, which cannot and do not add clarity to this case. It is unnecessary also in light of the clear, unemcumbered statement in our *Proceedings Below* and *Underlying Facts* sections of this petition. (supra).

Use of the term "taxpayer" wherever it appears in the opinions and papers below is inaccurate, misleading and a conclusion of law which is not warranted in this case. Wherever it appears, the term "taxpayer" should be read to mean "petitioner"; this will increase clarity and professionalism in this case. And this same understanding of terms should also apply to respondent's wording of his brief in answer to this petition; it will add clarity for the Court.

In the second paragraph of the BACKGROUND portion of the opinion (A-3, infra) there is a misstatement and misattribution that petitioner contended or contends "that wages do not constitute taxable income within the meaning of the Internal Revenue Code or the United States Constitution." Petitioner did not make such a contention in his petition (D-1, infra) or other documents filed with the Tax Court. It was respondent (not petitioner) who first raised and made such contention at page 3 in respondent's "Brief For The Appellee" in the Court of Appeals, and petitioner firmly disavowed such a contention at page 5 in his "Reply Brief For Appellant" in the Court of Appeals.

In the DISCUSSION portion of the opinion (A-4, infra) there is a misstatement and misattribution that petitioner "*argues that an income tax is a 'direct' tax*". Petitioner in his briefs and papers below did not make such an argument. Rather, petitioner argued below that impositions on *incomes* are excises (indirect taxes in the Constitutional sense) as this Court has ruled in *Brushaber v. Union Pacific Railroad Company*, infra, and in *Stanton v. Baltic Mining Company*, infra; and that an imposition on *income* is always an excise and may never be taken out of that category of indirect taxation to which it inherently belongs (Pages 12-13 of petitioner's brief in the Court of Appeals); petitioner's argument below was uncontested by respondent. Petitoner also argued below that an imposition directly on *petitioner* is an entirely different matter than an imposition on *income*, and that Congress never imposed on or made or attempted to make petitioner liable to pay any excise on *income* (Pages 12-13 and 18-20 of petitioner's brief in the Court of Appeals); petitioner's argument below was uncontested by respondent.

In the DISCUSSION portion of the opinion (A-4, infra) there is a misstatement and misattribution that petitioner "relies on the case of *Pollock v. Farmers' Loan and Trust Co.*, 157 U.S. 429 (initial decision), 158 U.S. 601 (decision on rehearing) (1895)." Petitioner did not cite or rely on such cases in either the Tax Court or the Court of Appeals. It was respondent (not petitioner) who cited and relied on such cases, as appears on page 8 of respondent's "Brief For The Appellee" in the Court of Appeals.

In the DISCUSSION portion of the opinion (A-5, infra) there is a misstatement and misattribution that petitioner argued that Congress lacks Constitutional authority to impose a "tax on *wages*" without apportionment. Petitioner did not argue or make such a contention in either the Tax Court or the Court of Appeals. Rather, petitioner argued that Congress lacks Constitutional authority to impose a "tax on *petitioner*" (Pages 10-13 of petitioner's brief in the Court of Appeals); petitioner's argument below was uncontested by respondent.

REASONS FOR GRANTING THE WRIT

In the two century history of this nation, this Court has never ruled on the important question affecting every human being in this nation whether there are words in the Constitution authorizing Congress to impose on individual persons any excise or tax (specifically one imposed by statute on the "taxable income" of every individual) or to impose on individual persons liability-for-payment of any excise on "taxable income".

The distinction and difference between income and individual persons is both important and vital. Income is merely a concept or attempted concept which has no defined meaning. Income is not a real live human person. The individual petitioner in this case is a real flesh-and-blood live human being and person. This distinction is important because, while Congress may lay an excise (an indirect tax in the Constitutional sense) on incomes, Congress may not constitutionally lay any imposition on individual persons. In 1927 Second Circuit Judge Learned Hand, in a case where the litigants did not argue the points argued by this instant petitioner in this present case, stated:

> If it is important, I suggest that the language of the (Sixteenth) Amendment itself gives Congress power to lay "taxes on incomes," *not on persons. (Emphasis added). Bowers v. Taft*, 20 F.2d 561, at 564. (1927).

And in that same case this Court teaches:

> *Income* is the thing which may be taxed — *income* from any source. The Amendment does not attempt to define *income* or to designate how taxes may be laid *thereon*, or how they may be enforced. (Emphasis added). *Taft v. Bowers*, 278 U.S. 470, at 481. (1929).

Without citing any Constitutional authority or any words of the Constitution in support of its ruling, the Court below ruled, for the first such ruling in the history of this nation, that "there is no question but that Congress has the constitutional authority to impose an income tax *upon the appellant*" (A-5, infra).

Thus, without citation or existence of Constitutional authority for the proposition, the Court below has, for the first time in the history of this nation, held that an excise imposed on "income" (an indirect tax in the Constitutional sense on the thing called "income") may be imposed directly upon an individual human person. Such an imposition on a human person has never before been enunciated by any Article III Federal Court, and is in glaring conflict with the proscriptions of the Constitution and the Constitutional scheme found in Article I, Section 2, clause 3 and Article I, Section 8, clause 1 and in Article I, Section 9, clause 4 of our Constitution.

The Court below has thus presented this nation with a Constitutional Crisis of a magnitude unseen and unheard since this Court's landmark decisions in *Brushaber v. Union Pacific Railroad Company*, 240 U.S. 1 (1916) and *Stanton v. Baltic Mining Company*, 240 U.S. 103 (1916) that an imposition on "income" is always an excise, "indirect" in the Constitutional sense, and may never be taken out of that category of indirect taxation to which it inherently belongs.

The Court below has also called the Sixteenth Amendment to the United States Constitution into question (A-5, infra) and also stated that this Court's landmark decision in *Pollock v. Farmers' Loan and Trust Co.*, 157 U.S. 429 (initial decision), 158 U.S. 601 (decision on rehearing) is overruled (A-5, infra).

The Court below has also ignored and in essence overruled this Court's historic ruling in *Southern Pacific Company v. Lowe*, 247 U.S. 330, 335 (1918), that

> "We must reject in this case, as we have rejected in cases arising under the Corporation Excise Tax Act of 1909 (*Doyle v. Mitchell Brothers Co.*, *ante*, 179, and *Hays v. Gauley Mountain Coal Co.*, *ante*, 189) the broad contention submitted in behalf of the Government that all receipts — everything that comes in — are income within the proper definition of the term "gross income"..."

The Court below has also discarded and in essence overruled this Court's decision in *Eisner v. Macomber*, 252 U.S. 189,

206 (1920) concerning the question of what is and what is not "income" as that term is used in the Constitution:

> "Congress cannot by any definition it may adopt conclude the matter, since it cannot by legislation alter the Constitution, from which alone it derives its power to legislate, and within whose limitations alone that power can be lawfully exercised."

The Court below has also disregarded and essentially overruled this Court's landmark decision in *Knowlton v. Moore*, 178 U.S. 41 (1900) requiring that excises (including those on "income") shall be geographically uniform throughout the United States.

POINT 1

THERE IS NO CONSTITUTIONAL AUTHORITY GRANTED TO CONGRESS TO IMPOSE A TAX (EITHER DIRECT OR INDIRECT IN THE CONSTITUTIONAL SENSE) ON PETITIONER WHO IS AN INDIVIDUAL HUMAN PERSON.

There is no Constitutional authority for Congress to make any imposition on *petitioner* or other individual *person*. The decision below is one of great Constitutional significance which should be reviewed by this Court.

It was uncontested by respondent in the Court below that in this case we are dealing with an imposition where the Constitutional regulation of apportionment and the Constitutional rule of uniformity are wholly negligible because *the imposition is one entirely beyond the scope of the Constitutional power of Congress and where consequently no authority to impose a burden either direct or indirect exists.*

The Court below (A-5, infra), after citing *Pollock* and the *Sixteenth Amendment*, tells this nation (A-5, infra) that *Pollock* has been overruled and that the *Sixteenth Amendment* was

unnecessary.[1] Based on the reasoning and major premise that *Pollock* is overruled and the *Sixteenth Amendment* unnecessary, the Court below concludes (A-5, infra): "*Hence*, there is no question but that Congress has the Constitutional authority to impose an income tax *upon the appellant.*"

This conclusion of the Court below is invalid. In order for the conclusion to be valid, there must be both a valid major premise and a valid minor premise before a valid syllogistic conclusion can emerge. The valid major and minor premises necessary for the syllogistic conclusion of the Court below (A-5, infra) are not present and the reasoning process is thus flawed and invalid.

That this non-sequitur makes no Constitutional sense is underscored by the fact that neither respondent nor the Court below could or did find and cite any words in our Constitution which authorize Congress to make any impositions directly *on persons.*

If *Pollock* is overruled and the *Sixteenth Amendment* unnecessary, as the Court below ruled, that does not create or show affirmatively any Constitutional authority for making any imposition "*upon the appellant*" (A-5, infra). In order for there to be Constitutional authority for an imposition "*upon the appellant*" (an individual human person), such authority must be spelled out in the words of our Constitution - and we are all now aware such words do not exist and that there is no Constitutional authority for any imposition "*upon the appellant*" - an individual human *person.*

Reliance on *Pollock* by the Court below and by respondent is misplaced because that case did not deal with any imposition on *individual persons;* that case dealt only with impositions

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[1] For these propositions about *Pollock* being overruled and the *Sixteenth Amendment* being unnecessary, the Court below (A-5, infra) relies on *New York ex rel. Cohn v. Graves*, 300 U.S. 308 (1937) where the litigants in that case did not argue the points argued by this instant petitioner in this present case and wherein this Court limited its "review to the question ... whether there is anything in the Fourteenth Amendment which precludes the State of New York from taxing the income merely because it is derived from sources, which, to the extent indicated, are located outside the State." id. at 312.

on *income* and not, as in this case, any question of an imposition directly on *petitioner* (a human person).

Second Circuit Judge Learned Hand, in a 1927 case where the litigants did not argue the points argued in this present case, teaches:

> "If it is important, I suggest that the language of the (Sixteenth) Amendment itself gives Congress power to lay "taxes on incomes," *not on persons.*" (Emphasis added). *Bowers v. Taft*, 20 F.2d 561, at 564. (1927).

And in that same case this Court teaches:

> "*Income* is the thing which may be taxed - *income* from any source. The Amendment does not attempt to define *income* or to designate how taxes may be laid *thereon*, or how they may be enforced." (Emphasis added). *Taft v. Bowers*, 278 U.S. 470, at 481. (1929).

The decision in this case by the Court below is one of great Constitutional significance which should be reviewed by this Court.

POINT 2

THERE IS NO LAW OR STATUTE IMPOSING A "FEDERAL INCOME TAX FOR THE TAXABLE YEAR 1980" *ON PETITIONER OR MAKING* PETITIONER (AN INDIVIDUAL PERSON) LIABLE FOR PAYMENT OF ANY CODE SUBTITLE A IMPOSITION *ON INCOME* OR *ON TAXABLE INCOME.*

Not only did Congress not enact any Code subtitle A imposition on "taxable income" for 1980, neither did Congress enact any Code subtitle A imposition on any individual person for 1980 or make any individual liable for payment of any Code subtitle A imposition on "income" or on "taxable income".

That Congress did not legislate a "taxable year 1980" for individuals is clearly shown by comparing Sections 1 and 11(a) of the Code. In Section 11(a) Congress clearly spelled out for

corporations that there was a "taxable year 1980" in the following language:

> §11(a) Corporations in general. — A tax is hereby imposed for each taxable year on the taxable income of every corporation.

Congress has thus asserted in Section 11(a) an imposition on every corporation's "taxable income" for *each taxable year*, including 1980.

In stark contrast with § 11(a), Congress did not assert an imposition on any human being's taxable income for any period of time — not a day — not a month — not a year — not any period of time.

Subtitle A Code Section 1 (c) provides that

> "There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2 (b)) who is not a married individual (as defined in section 143) a tax determined in accordance with the following table: ..."

There is not a single word or phrase in this Code § 1 that refers in any manner to any time period at all. And for individual persons it is absolutely clear there was no "taxable year 1980" and without a "taxable year 1980" there cannot be in any circumstance any "Federal income tax for the taxable year 1980" when an individual person is involved because neither Section 1 nor any other section of the Code provides for a "taxable year 1980" of any individual.

• • •

That Congress did not assert liability against petitioner or any individual person for payment of any amount of money on account of any subtitle A imposition on "taxable income" is clearly shown by analyzing the statutory scheme set out in subtitle B of the Code and comparing it with the subtitle A statutory scheme.

Subtitle A of the Code is entitled, "Income Tax" and covers sections 1 through 1564 of the Code.

Subtitle B of the Code is entitled, "Estate and Gift Taxes" and covers sections 2001 through 2622 of the Code.

Solely for illustrative purposes, we note that Subtitle B (Chapter 11) Code section 2001(a) states (concerning Estate Taxes) that:

> "A tax is hereby imposed on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States."

and that section 2002 provides:

> "The tax imposed by this chapter shall be paid by the executor."

Thus Congress has demonstrated that the subtitle B (Chapter 11) Code section 2001(a) imposition of a tax on transfer of a taxable estate is not self-executing. In subtitle B, Congress has very simply asserted in Code Section 2002 that liability for payment of the estate tax is imposed on the individual who is the executor of the estate.

Congress knows full well how to assert liability for payment of some imposition on a particular individual. It did so in subtitle B of the Code concerning estate taxes.

But Congress did not do the same thing as regards subtitle A impositions on "taxable income". As regards subtitle A impositions on "taxable income" Congress did not impose on or try to make any individual person liable for payment of any imposition on "taxable income"; no such liability-for-payment statute exists concerning subtitle A impositions on "taxable income".

At this point we know there is no "taxable year 1980" and we also know there is no liability-for-payment of subtitle A impositions on "taxable income"; neither respondent nor the Court below could find and cite any authority for either of their propositions.

* * *

To add to the confusion, the Court (A-6, infra) quotes from subtitle A section 63 (a) of the Code:

> § 63(a) CORPORATIONS. – For purposes of this subtitle, in the case of a corporation, the term "taxable income" means *gross income minus the deductions allowed by this chapter*. (Emphasis added to denote portion quoted by Court below at A-6, infra.)

Thus the Court below, in explaining the term "taxable income" (which is a concept or attempted concept being taxed in section 1 of the Code) tells us what taxable income is *in the case of a corporation*. The Court below never explained what connection a *corporation's* taxable income has with this instant case where the petitioner is a real live human being and is not a corporation. This explanation by the Court belows makes no logical, Constitutional or legal sense at all.

The decision of the Court below concerning the existence of a "taxable year 1980", liability-for-payment of subtitle A excises on "taxable income", and the relevance of definition of a corporation's "taxable income" in this case where the petitioner is an individual human being and where the petitioner is not a corporation, should be reviewed by this Court.

POINT 3

THE WORD "INCOME" AS USED IN TAXING STATUTES HAS NO DEFINED MEANING, CANNOT BE MEASURED OBJECTIVELY, AND THIS FAILURE OF DEFINITION AND MEASUREABILITY MAKES "UNIFORMITY" OF EXCISES ON *INCOME* IN THE CONSTITUTIONAL SENSE IMPOSSIBLE AND RENDERS THE CODE SECTION 1 EXCISE ON "TAXABLE INCOME" UNCONSTITUTIONAL AND VOID BECAUSE ARTICLE I, SECTION 8, CLAUSE 1 OF THE CONSTITUTION REQUIRES THAT "EXCISES SHALL BE UNIFORM THROUGHOUT THE UNITED STATES".

Even if we lose sight of the fact there is no Constitutional or statutory authority to make any imposition on *petitoner*, and even if we get distracted into talking about the Code Section 1 excise on "taxable income", there is still no solace for respondent.

Code Section 1(c) imposes (for no specific period of time) an excise on the attempted concept "taxable income". Remembering that petitioner is a real live human being and is not a corporation, we find "taxable income" purportedly defined in Code Section 63(b) to mean "adjusted gross income" with modifications set out in that section.

Tracing this mystery, we find "adjusted gross income" purportedly defined in Code Section 62 to mean "gross income" with modifications set out in that section.

Tracing this mystery further, we find "gross income" purportedly defined in Code Section 61, and in that section we learn that "Gross income means all income". Thus this equation brings us the knowledge that *gross means all* and that *income means income*. But the term or concept "income" is not defined.

In tracing this mystery of defining "income" we have thus learned that the Code does not define "income" and that with

the arrival and departure of Code section 61, we still have no idea what "income" is or how "income" is defined or measured objectively.

In the Court below, respondent admitted at page 9 of respondent's "Brief for the Appellee" in the Court of Appeals that "income" is merely a concept and a concept without any defined meaning and a concept which cannot be measured objectively. Respondent there admitted that the term income has no "technical meaning" and that "the concept of income is not static" and that income is "elastic" and that income is "subject to amplification and modification". Thus the parties to this action are in basic agreement (albeit the respondent reluctantly) that the word *"income" has no defined meaning and cannot be measured objectively* and that consequently the terms "gross income", "adjusted gross income", and "taxable income" are all vague and indefinite.

Nevertheless, the Court below ruled "Even if" (A-7, infra) the phrase "gross income means all income from whatever source derived" is "somehow vague or indefinite" (A-7, infra) that 100% of wages *received* "fall squarely within the definition of income contained in Section 61(a)(1) of the Code." (A-7, infra).

Thus we have a situation where the parties agree that income is nowhere defined and the Court below is unable to define income. Still and all, the Court below rules, without citation of authority, that somehow or other there is a "definition of income contained in Section 61 (a)(1) of the Code." (A-7, infra).

Code Section 61 is entitled "Gross Income Defined" but does not define "income". The Court below has thus ruled, concerning wages received, that all such receipts are income within the proper definition of the term "gross income". Such a ruling is a direct affront to and overruling of this Court's historic ruling in *Southern Pacific Company v. Lowe*, 247 U.S. 330, 335 (1918) that

> "We must reject in this case, as we have rejected in cases arising under the Corporation Excise Tax Act

> of 1909 (*Doyle v. Mitchell Brothers Co.*, *ante*, 179, and *Hays v. Gauley Mountain Coal. Co.*, *ante*, 189) the broad contention submitted in behalf of the Government that all receipts – everything that comes in – are income within the proper definition of the term "gross income" . . ."

and an affront to and overruling of this Court's landmark ruling in *Eisner v. Macomber*, 252 U.S. 189, 206 (1920) concerning the question of what is and what is not "income" as that term is used in the Constitution:

> "Congress cannot by any definition it may adopt conclude the matter, since it cannot by legislation alter the Constitution, from which alone it derives its power to legislate, and within whose limitations alone that power can be lawfully exercised."

This Court has never ruled on how "income" is measured or is to be measured objectively. And the only guess by this Court at possibly defining "income" was abandoned by this Court in 1955. This Court's early guess in *Stratton's Independence v. Howbert*, 231 U.S. 399, 415 (1913) that ***"income" may be defined as the gain derived from capital, from labor, or from both combined*** was abandoned and finally so by this Court in *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426 (1955). Since this Court's 1955 *Glenshaw* decision there has not even been a pretense at definition of the term, concept or word "income". Thus "income" and perforce "taxable income" are both undefined and unmeasureable by any objective standard.

There being no definition of ***income*** and no objective methodology for measuring ***income***, it becomes a necessarily valid conclusion that "Gross Income", "Adjusted Gross Income" and "Taxable Income" are undefined and unmeasureable because all these terms are built on the foundation of an undefined and unmeasureable concept, word or term "***income***".

Because there is no definition of "income" and perforce "taxable income" or any method for measuring either "income" or "taxable income", it is a necessarily valid conclusion that there

can be no uniformity of opinion or measurement of what "taxable income" is as that term is used in Code section 1.

It is a self-evident truth and mathematical certainty that the Code Section 1 excise on "taxable income" is determined by multiplying the multiplicand ("taxable income") by the multiplier (flat or progressive rate or formula imposed by statute) in order to arrive at the product ("excise"). In order for the excise on "taxable income" to be geographically uniform (see *Knowlton v. Moore*, 178 U.S. 41 (1900)) so as to conform with the Constitutional mandate of Article I, Section 8, clause 1 of our Constitution that Excises Shall Be Uniform Throughout The United States, it is necessary that both the multiplicand and multiplier be ascertainable. In this instant case we may assume that the multiplier is ascertainable, but that does not save Code Section 1 from being unconstitutional; the multiplicand ("taxable income") is not ascertainable because it is undefined and unmeasureable.

It was uncontested by respondent in the Court below that the only way the excise on "taxable income" can be geographically uniform is by setting forth a precise authoritative legal definition of the term "income" and setting forth a precise methodology for measuring "income". Then and only then can such an excise on "taxable income" be uniform throughout the United States.

With no definition of "income" and perforce "taxable income", and no methodology for measuring either, it is a necesarily valid analysis and conclusion that the excise imposed on "taxable income" in Section 1 of the Code violates Article I, Section 8, clause 1 of our Constitution which requires that "excises shall be uniform throughout the United States". The decision below concerns matters of great Constitutional significance which should be reviewed by this Court. Every human being in this Nation will be affected by this case.

CONCLUSION

For the foregoing reasons, this petition should be granted and a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit.

Respectfully submitted,

THOMAS J. CARLEY
Counsel for Petitioner
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APPENDIX

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 236 — August Term, 1984

(Argued: Oct. 19, 1984 Decided: Dec. 13, 1984)

Docket No. 84-4059

ALFRED FICALORA,

Appellant,

—vs—

COMMISSIONER OF INTERNAL REVENUE,

Appellee.

Before:

OAKES and WINTER, *Circuit Judges,*
and CLARIE, *District Judge* *

Appeal from a decision of the United States Tax Court (Judge Dawson, adopting the order of Special Trial Judge Gussis) determining a deficiency in the amount of $10,013.09 and additions to tax of $606.55 and $526.05 under Sections 6651(a)(1) and 6653(a)(1) of the Internal Revenue Code of 1954 (26 U.S.C.), respectively.

AFFIRMED.

* Honorable T. Emmet Clarie, Senior United States District Judge for the District of Connecticut, sitting by designation.

Thomas J. Carley, Rockville Centre, N.Y., *for Appellant.*

Glen L. Archer, Jr., Assistant Attorney General, Tax Division, United States Department of Justice, Washington, D.C. (Michael L. Paup, William S. Estabrook and Elaine F. Ferris, Attorneys, Tax Division, Department of Justice, Washington, D.C., on the brief), *for Appellee.*

CLARIE, *District Judge.*

Alfred Ficalora appeals from a decision of the United States Tax Court, Dawson, J., determining, for the calendar year 1980, a deficiency in the amount of $10,013.09 and additions to tax of $606.55 and $526.05 under Sections 6651(a)(1) and 6653(a)(1) of the Internal Revenue Code of 1954 (26 U.S.C.), respectively. Having found the appellant's many claims to be without any merit, we affirm the decision of the United States Tax Court.

BACKGROUND

Alfred Ficalora filed a document with respect to his tax liability for 1980 on which he reported taxable income in the amount of $6,465.00. During the taxable year 1980, the appellant was employed by the New York Telephone Company. The document filed by Ficalora became the subject of an Internal Revenue Service audit. As a result of that audit, the Commissioner adjusted the taxpayer's gross income to include $2,614.00 in interest income and $343.00 in dividend income, and to reflect the disallowance of $27,219.00 in business expense deductions and the allowance of a $1,000.00 credit for a personal

exemption. Based on these adjustments, the Commissioner determined that the taxpayer owed a deficiency of $10,013.09. The Commissioner further found that as the document filed by the taxpayer did not constitute a tax return within the meaning of the Internal Revenue Code, the taxpayer is liable for an addition to tax under Code Section 6651(a)(1) in the amount of $606.55 for failure to file a return. The Commissioner also determined that the underpayment in tax was due either to the taxpayer's negligence or his intentional disregard of rules and regulations, and, therefore, assessed an addition to tax under 26 U.S.C. § 6653(a) in the amount of $526.05.

A notice of deficiency reflecting these determinations was sent to the taxpayer on June 2, 1983. Ficalora thereupon filed a petition with the Tax Court seeking a redetermination of the deficiencies and additions to tax assessed against him by the Commissioner. In this petition, and other documents filed with the Tax Court, the taxpayer asserted various legal arguments, including, *inter alia*, the contentions that wages do not constitute taxable income within the meaning of the Internal Revenue Code or the United States Constitution, that the withholding statutes are unconstitutional, and that the additions to tax, provided in Code Sections 6651(a)(1) and 6653(a)(1), are unconstitutional.

The Commissioner moved to dismiss the appellant's petition, pursuant to Rules 34(b) and 40 of the Rules of Practice and Procedure of the United States Tax Court, on the ground that the taxpayer had alleged no justiciable error with respect to the determination and had asserted no justiciable facts in support of the petition. The Tax Court granted that motion and sustained in full

the deficiency and additions to tax asserted against the taxpayer.

Through this appeal, the appellant has attempted to launch a broadly based attack on the authority of both the Courts and the Congress to impose and collect a tax on his income for the taxable year 1980.

DISCUSSION

I. *Constitutional Authority to Impose An Income Tax on Individuals.*

We first address ourselves to the appellant's contention that neither the United States Congress nor the United States Tax Court possess the constitutional authority to impose on him an income tax for the taxable year 1980. Appellant argues that an income tax is a "direct" tax and that Congress does not possess the constitutional authority to impose a "direct" tax on him, since such a tax has not been apportioned among the several States of the Union. In support of his argument, appellant cites Article I, Section 9, clause 4 of the United States Constitution which provides that:

> "No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken."

He also relies on the case of *Pollock* v. *Farmer's Loan and Trust Co.*, 157 U.S. 429 (initial decision), 158 U.S. 601 (decision on rehearing) (1895), wherein the United States Supreme Court held that a tax upon income from real and personal property is invalid in the absence of apportionment.

In making his argument that Congress lacks constitutional authority to impose a tax on wages without apportionment among the States, the appellant has chosen to ignore the precise holding of the Court in *Pollock*, as well as the development of constitutional law in this area over the last ninety years. While ruling that a tax upon income from real and personal property is invalid in the absence of apportionment, the Supreme Court explicitly stated that taxes on income from one's employment are not direct taxes and are not subject to the necessity of apportionment. *Pollock* v. *Farmer's Loan and Trust Co.*, 158 U.S. at 635. Furthermore, the Sixteenth Amendment to the United States Constitution, enacted in 1913, provides that:

> "The Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

Finally, in the case of *New York ex rel. Cohn* v. *Graves*, 300 U.S. 308 (1937), the Supreme Court in effect overruled *Pollock*, and in so doing rendered the Sixteenth Amendment unnecessary, when it sustained New York's income tax on income derived from real property in New Jersey. *Id.* at 314-15. Hence, there is no question but that Congress has the constitutional authority to impose an income tax upon the appellant.

II. *Statutory Authority to Impose an Income Tax on Individuals and Definition of Taxable Income*

The appellant contends that "[n]owhere in any of the Statutes of the United States is there any section of law making any individual liable to pay a tax or excise on 'taxable income.'" He also claims that there is no

law or statute which imposes on him certain additions to income tax due. The essence of the appellant's argument is that 26 U.S.C. § 1 does not impose a tax on any individual for any stated period of time; rather, it imposes a tax on an undefined: "taxable income".

Section 1 of the Internal Revenue Code of 1954 (26 U.S.C.) (hereinafter the Code) provides in plain, clear and precise language that "[t]here is hereby imposed on the taxable income of every individual . . . a tax determined in accordance with" tables set-out later in the statute. In equally clear language, Section 63 of the Code defines taxable income as "gross income, minus the deductions allowed by this chapter . . .", gross income, in turn, is defined in Section 61 of the Code as "all income from whatever source derived, including (but not limited to) . . . : (1) Compensation for services . . .". Despite the appellant's attempted contorted construction of the statutory scheme, we find that it coherently and forthrightly imposes upon the appellant a tax upon his income for the year 1980.

Sections 6651(a)(1) and 6653(a)(1) of the Code impose additions to the income tax due and owing for failure to file a proper return and for failure to make timely payments, respectively. The appellant claims that the Congress lacks the constitutional authority to enact such additions to tax. He also contends that there are no laws or statutes which impose on him any additions to tax. The constitutionality of Congress' enactment of tax penalties, such as §§ 6651(a)(1) and 6653(a)(1), has been upheld by the Supreme Court. *See Helvering* v. *Mitchell*, 303 U.S. 391, 399 (1938); *Oceanic Steamship Navigation Co.* v. *Stranahan*, 214 U.S. 320, 339 (1909). These sections, on their face, by their clear language,

impose additions to tax on the appellant for failing to file a proper return and for failing to make timely payment of his income tax due. Accordingly, there is no merit to the appellant's contention that there is no constitutional authority for these provisions and that there are no laws or statutes which impose additions to tax on him.

III. *"Income"*

Lastly, the appellant asserts that the term "income", as used in the taxing statutes, has no defined meaning and is unconstitutionally vague and indefinite. As discussed above, Section 61 of the Code defines gross income as "all income from whatever source derived". Even if we were to assume, *arguendo*, that this phrase is somehow vague or indefinite, Section 61 of the Code specifically cites "[c]ompensation for services . . ." as a concrete example of what is meant by the term income. The wages which the appellant received for his services rendered to New York Telephone in taxable year 1980, fall squarely within the definition of income contained in Section 61a(1) of the Code. The appellant's argument that the term "income", as used in the Code, is unconstitutionally vague and indefinite, is totally without merit.

IV. *Imposition of Sanctions*

The Commissioner of Internal Revenue argues forcefully for the imposition of sanctions in this appeal. However, the determination of whether to impose such sanctions is reserved to the discretion of this Court. As this is the appellant's first appeal of the issues presented in this case, and because this Court has not heretofore explicitly ruled on the issues raised, however clear their resolution may be, we will not impose sanctions upon the appellant.

CONCLUSION

For the reasons set forth above, we affirm the decision of the United States Tax Court.

United States Court of Appeals
for the
Second Circuit

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the Thirteenth day of December one thousand nine hundred and eighty-four.

Present:

HON: JAMES L. OAKES
HON: RALPH K. WINTER, CIRCUIT JUDGES
HON: T. EMMET CLARIE*, DISTRICT JUDGE

ALFRED FICALORA,

Appellant,

v. 84-4059

COMMISSIONER OF INTERNAL REVENUE,

Appellee.

Appeal from the United States Tax Court.

This cause came on to be heard on the transcript of record from the United States Tax Court, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said Tax Court be and it hereby is affirmed in accordance with the opinion of this court with costs to be taxed against the appellant.

ELAINE B. GOLDSMITH,
Clerk

By: Edward J. Guardaro
Deputy Clerk

* Senior United States District Judge for the District of Connecticut, sitting by designation.

United States Tax Court
Washington, D.C. 20217

ALFRED FICALORA,

Petitioner,

v.

Docket No.
25453-83

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ORDER AND DECISION

Upon consideration of the record herein, and for reasons appearing in the Memorandum Sur Order of the Special Trial Judge, which is hereto attached and served herewith and which we hereby approve and adopt, it is

ORDERED that respondent's Motion to Dismiss for Failure to State a Claim Upon Which Relief can be Granted, filed on October 24, 1983, is granted; and it is further

ORDERED and DECIDED that there is a deficiency in petitioner's Federal income tax for the taxable year 1980 in the amount of $10,013.09 and additions to tax due from petitioner for the taxable year 1980 under sections 6651(a)(1) and 6653(a)(1) in the respective amounts of $606.55 and $526.05.

(Signed) HOWARD A. DAWSON, JR.

Judge

Entered: December 15, 1983

United States Tax Court
Washington, D.C. 20217

ALFRED FICALORA,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 25453-83

MEMORANDUM SUR ORDER

On October 24, 1983 respondent filed a Motion to Dismiss for Failure to State a Claim Upon Which Relief can be Granted pursuant to Rule 40,[1] which was assigned to the undersigned pursuant to Delegation Order No.8, 81 T.C. VII (1983).

Respondent determined a deficiency in petitioner's Federal income tax for 1980 in the amount of $10,103.09 and also determined additions to tax under section 6651(a)(1) and section 6653(a)(1)[2] in the respective amounts of $606.55 and $526.05. Petitioner was a resident of Oceanside, New York at the time the petition herein was filed.

In said petition, no issues were raised by petitioner in the assignment of errors within the meaning of Rule 34(b). Rule 34(b) provides in pertinent part that the petition shall contain "clear and concise assignments of each and every error which the petitioner alleges to have been committed by the Commissioner in the determination of the deficiency or liability" and "clear and concise lettered statements of the facts on which petitioner bases the assignments of error." It is abundantly clear that the petition filed herein alleges no justiciable error with

[1] All rule references are to the Tax Court Rules of Practice and Procedure.

[2] All section references are to the Internal Revenue Code of 1954, as amended, unless otherwise indicated.

respect to the respondent's determination and no justiciable facts in support thereof. Petitioner's notice of objection to respondent's motion to dismiss (filed November 18, 1983) does not cure the inadequacies of the petition. Petitioner has the burden of showing error in respondent's determinations Rule 142(a). Under such circumstances, any issues not raised in the assignment of errors shall be deemed conceded. Rule 34(b)(4); see *Jarvis v. Commissioner*, 78 T.C. 646, 658 (1982).

Petitioner's allegations and legal theories in his petition are wholly without merit. The Federal income tax laws are constitutional. *Brushaber v. Union Pac. R.R. Co.*, 240 U.S. 1 (1916). Petitioner's assertion that he is not an individual subject to the tax is patently frivolous. *Rowlee v. Commissioner*, 80 T.C. 1111, 1120 (1983). It is well settled that wages and compensation, for services are taxable income. *Eisner v. Macomber*, 252 U.S. 189 (1920). The United States Tax Court is constitutional and has jurisdiction over income tax cases. *Burns, Stix, Friedman & Co., Inc. v. Commissioner*, 57 T.C. 392 (1971). Petitioner has failed to properly prosecute his case in compliance with this Court's rules of practice. Respondent's motion to dismiss will therefore be granted and a decision entered in his favor for the determined deficiency and addition to tax.

James M. Gussis
Special Trial Judge

UNITED STATES TAX COURT

ALFRED FICALORA,)

Petitioner,)

v.) Docket No. 25453-83

COMMISSIONER OF INTERNAL REVENUE,)

Respondent.)

PETITION

The petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated June 2, 1983 and other relief and, as basis for this case, alleges as follows:

1. Petitioner is an individual with legal residence now at 3250 Ocean Harbor Drive, Oceanside, N.Y. 11572.

2. The notice of deficiency ... was mailed to petitioner on June 2, 1983 and was issued by the Office of the Internal Revenue Service at Brooklyn, N.Y.

3. The Commissioner determined a deficiency against me in income tax for the year 1980 in the amount of $10,013.09, a Section 6651(a)(1) penalty of $606.55, and a Section 6653(a)(1) penalty of $526.05, all of which is in dispute.

4. The determination of tax and penalties set forth in said notice of deficiency is based upon the following errors:

a. Respondent erroneously asserts an income tax deficiency against me for 1980 in the amount of $10,013.09.

b. Respondent erroneously asserts a Section 6651(a)(1) penalty against me for 1980 in the amount of $606.55.

c. Respondent erroneously asserts a Section 6653(a)(1) penalty against me for 1980 in the amount of $526.05.

d. Respondent has no authority under the Constitution of the United States of America ("Constitution") or the Internal Revenue Code of 1954, as amended ("Code") to impose on me or assert either the above-mentioned income tax deficiency for 1980 against me or the above-mentioned penalties for 1980 against me.

e. Respondent has failed to show that he owes me more than $9,682.00.

5. The facts upon which petitioner relies as basis of this case are as follows:

a. Respondent in his notice of deficiency is asserting that an income tax can be imposed directly on me without apportionment of said tax among the several states.

b. Art. I, Sec. 2, cl. 3 of the Constitution provides:

> "Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers."

c. Art. I, Sec. 9, cl. 4 of the Constitution provides:

> "No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken."

d. Art. I, Sec. 2, cl. 3 and Art. I, Sec. 9, cl. 4 of the Constitution, singly or in combination, prohibit the Federal government from imposing a tax or an income tax directly on me as an individual.

e. There are no words in the Constitution empowering Congress to impose an income tax directly on me as an individual.

f. Congress did not impose an income tax on me for 1980.

g. Congress did not enact any legislation making me liable to pay an income tax for 1980.

h. The term "income tax" is undefined, vague and indefinite.

i. The term "income" is undefined, vague and indefinite.

j. The term "interest income" is undefined, vague and indefinite.

k. The term "dividend income" is undefined, vague and indefinite.

l. There is no objective standard showing how "income" can be measured.

m. There is no objective standard showing how "interest income" can be measured.

n. There is no objective standard showing how "dividend income" can be measured.

o. The term "income tax return" is undefined, vague and indefinite.

p. The term "tax return" is undefined, vague and indefinite.

q. The term "return" is undefined, vague and indefinite.

r. The term "taxable income" is undefined, vague and indefinite.

s. A penalty under Code Section 6651(a)(1) cannot be imposed where there is no underpayment of income tax.

t. A penalty under Code Section 6653(a)(1) cannot be imposed where there is no underpayment of income tax.

u. There are no words in the Constitution empowering Congress to enact Section 6651(a)(1) of Title 26 of the United States Code, and said statute or pretended statute is beyond the power of Congress to enact and, on that account, unconstitutional and void.

v. Section 6651(a)(1) of Title 26 of the United States Code is vague and indefinite and, on that account, unconstitutional and void.

w. There are no words in the Constitution empowering Congress to enact Section 6653(a)(1) of Title 26 of the United States Code, and said statute or pretended statute is beyond the power of Congress to enact and, on that account, unconstitutional and void.

x. Section 6653(a)(1) of Title 26 of the United States Code is vague and indefinite and, on that account, unconstitutional and void.

y. There are no words in the Constitution empowering Congress to enact legislation imposing interest charges on me, and all such statutes or pretended statutes are beyond the power of Congress to enact and, on that account, unconstitutional and void.

z. There is no underpayment of income tax in this case by me.

aa. I had no income in or for the year 1980.

ab. I had no interest income in or for the year 1980.

ac. I had no dividend income in or for the year 1980.

ad. I had no gross income in or for the year 1980.

ae. I had no adjusted gross income in or for the year 1980.

af. I had no taxable income in or for the year 1980.

ag. During 1980, from agreed-upon compensation from New York Telephone Company due me in exchange for my labor, there was withheld from me and paid over to respondent, instead of to me, the following amounts under the aegis of:

26 U.S. Code Sections 3101 and/or 3102	$1,587.67
26 U.S. Code Section 3402	8,094.89
Total withheld from me in 1980 and paid over to respondent instead of being paid to me.	$9,682.56

ah. I am entitled to receive from respondent the amount of $9,682.56 so withheld from me in 1980 and paid over to respondent.

ai. This Tax Court has the power to order respondent to pay said $9,682.56 to me because it can exercise "judicial power" to do so and thus avoid a declaration by the Appellate Courts that the U.S. Tax Court system is unconstitutional because the Constitution requires that "judicial power" be vested in courts whose judges enjoy life tenure and protection against salary diminution.

aj. The U.S. Tax Court system cannot exercise "judicial power" and is unconstitutional because the Constitution requires that "judicial power" be vested in courts whose judges enjoy life tenure and protection against salary diminution. And so too all administrative agency procedures adjunct to or ancillary to Tax Court proceedings are also unconstitutional because, inter alia, they are linked to a procedure leading to Tax Court proceedings which are unconstitutional.

ak. There are no words in the Constitution empowering Congress to enact Section 3101 of Title 26 of the United States Code, and said statute or pretended statute is beyond the power of Congress to enact and, on that account, unconstitutional and void.

al. Section 3101 of Title 26 of the United States Code is vague and indefinite and, on that account, unconstitutional and void.

am. There are no words in the Constitution empowering Congress to enact Section 3102 of Title 26 of the United States Code, and said statute or pretended statute is beyond the power of Congress to enact and, on that account, unconstitutional and void.

an. Section 3102 of Title 26 of the United States Code is vague and indefinite and, on that account, unconstitutional and void.

ao. There are no words in the Constitution empowering Congress to enact Section 3402 of Title 26 of the United States Code, and said statute or pretended statute is beyond the power of Congress to enact and, on that account, unconstitutional and void.

ap. Section 3402 of Title 26 of the United States Code is vague and indefinite and, on that account, unconstitutional and void.

aq. I am not liable for any penalties under Code Section 6651(a)(1) or Code Section 6653(a)(1).

ar. I am not liable to pay an income tax for 1980.

WHEREFORE, petitioner prays that the Court may try the case and:

1. Determine that the Commissioner erred as alleged in each assignment of error set forth above; and

2. Find each of the statements set forth under Paragraph 5 to be a fact; and

3. Find that there is no deficiency in income tax for the period involved; and

4. Find that there are no penalties due for the period involved; and

5. Find that the petitioner is entitled to payment from respondent for the period here involved; and

6. Give such other and further relief to petitioner as in the premises may be just and proper.

_____

ALFRED FICALORA

Dated: August 29, 1983